In the High Court of Judicature at Madras

Dated: 18/03/2003

CORAM

The Hon'ble Mr.Justice P.D.DINAKARAN

Criminal Appeal No.574 of 1996

V.Kasi .. Appellant

-Vs-

State of Tamilnadu,
rep. by the Inspector of Police,
Vigilance and Anti Corruption
Department,
Dharmapuri. .. Respondent

Prayer:- Appeal is directed against the judgment of conviction and sentence dated 15.7.1996 in C.C.No.75 of 1991 passed by the learned First Additional District Judge-cum-Chief Judicial Magistrate at Krishnagiri.

!For Appellant : Mr.B.Sriramulu
Senior Counsel

^For Respondent : Mr.V.Jayaprakash Narayanan
Govt. Advocate (Crl.Side)

:J U D G M E N T

Heard.

2. This Criminal Appeal is preferred by the accused against the judgment of conviction and sentence dated 15.7.1996, made in C.C.No.75 of 1991 of the learned I Additional District Judge-cum-Chief Judicial Magistrate, Krishnagiri.

3. The accused was working as a Revenue Inspector in Firka Taluk, Harur, during January to March, 1990. Concededly, the accused is a public servant.

4. The accused was charged for the offences punishable under Sections 7 and 13(1)(d)(i) & (ii) r/w 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act'), with reference to an alleged occurrence of having demanded and accepted bribe of Rs.100/- from one

Thiru.K.Kannan (P.W.1) as gratification other than legal remuneration for processing the application dated 13.02.1990 (Ex.P5) of P.W.1 for issuing "Small Farmer Certificate" for obtaining electricity supply at free of cost.

5.1. The events leading to the filing of this appeal, briefly stated, are that P.W.1, who was in need of "Small Farmer Certificate" for obtaining supply of electricity at free of cost, approached the Village Administrative Officer, Harur Taluk, namely, N.Theerthagiri (P.W.5) on 13.2.1990 and the said Village Administrative Officer (P.W.5) issued Chitta (Ex.P6), Adangal (Ex.P7) and "No Objection Certificate" (Ex.P8) certifying that P.W.1 was the resident of H.Thottampatti Village, was in possession of land to the extent of 0.50.0 hectare, and was entitled to claim the benefits of Small Farmers for supply of electricity at free of cost.

5.2. On 28.2.1990, P.W.1 went to the Taluk Office, met the accused and requested him to issue "Small Farmer Certificate" by submitting Exs.P1 to P4 application forms, Ex.P5 requisition letter, Ex.P6 Chitta, Ex.P7 Adangal and Ex.P8 "No Objection Certificate". After receiving all the papers, the accused asked P.W.1 to bring P.W.5 to get a statement from P.W.5 for grant of "Small Farmer Certificate". But, the accused demanded a sum of Rs.100/- from P.W.1 for issuing the said certificate. When P.W.1 informed the accused that he did not have money, he was asked to get money for completing the work.

5.3. P.W.1 was not willing to pay any bribe and approached the office of the Inspector of Police, Vigilance and Anti Corruption Department, Dharmapuri (P.W.9), with Rs.100/- (M.O.1 series) at about 9 a.m. on 5.3.1990 and lodged a complaint (Ex.P9), complaining the demand of bribe by the accused. Based on the said complaint, the Inspector of Police, Vigilance and Anti Corruption Department, Dharmapuri, (P.W.9) registered a F.I.R. on 5.3.1990 (Ex.P21).

5.4. After registering the F.I.R. (Ex.P21) the investigating officer (P.W.9) prepared two trap witnesses, namely (i) K.Raghupathy (P.W.2), who was working in the Municipal Office, Dharmapuri, and (ii) Sivakumar, who was working in Tamil Nadu Water Supply and Drainage Board, and introduced them to P.W.1. Both the trap witnesses were also permitted to read the complaint (Ex.P9) filed by P.W.1. Thereafter, P.W.9 made preparations for trapping.

5.5. P.W.9, received Rs.100/- in Rupees ten denomination (M.O.1 series) from P.W.1, bearing numbers as detailed hereunder:
1) 54B 168243 6) 69R 786962
2) 32G 568675 7) 83A 088942
3) 0C 557025 8) 18E 744080
4) 18M 932456 9) 42T 535619 and
5) 47N 466561 10) 59N 042394
P.W.9 showed the currencies (M.O.1 series) to the trap witnesses. P. W.9 took a glass of water, added chemical powder (Sodium Carbonate powder) and asked the trap witnesses to immerse their fingers into the solution, and required them to observe that there was no change in the colour of the

solution. Then, P.W.9 dusted phenolphthalein powder on the currencies, required the trap witness (P.W.2) to count the currencies and to immerse his fingers in the Sodium Carbonate Solution. It was observed that the solution turned into purple-red colour. The solution was put into a separate bottle with a mark "S1" (M.O.2). The balance of phenolphthalein powder after dusting the said currencies of Rs.100/- was kept in a separate bag marked as "A" (M.O.3), and the balance of Sodium Carbonate after preparing the solution was kept in a separate bag marked as "B" (M.O.4). P.W.9, thus, explained the procedure of conducting the trap and handed over the amount of Rs.10 0/- dusted with phenolphthalein powder to P.W.1 and required him to meet the accused and pay him if demanded and give signal to the trap squad immediately. Thereafter, P.W.1 and the trap witness P.W.2 went to the office of the accused, as recorded under the mahazar marked as Ex.P10, duly signed by P.W.1, P.W.2 and Sivakumar.

5.6. As directed by PW9, PW1 and PW2 reached the Harur Taluk Office at about 3 p.m. on 5.3.1990, and the accused was not in the office. P.Ws.1 and 2 waited for 1+ hours outside. The accused came at 4.30 p.m. and enquired whether PW1 brought Rs.100/- as demanded. P.W.1 took Rs.100/- (M.O.1 series) from his pocket and gave them to the accused, as demanded by him, in the presence of PW2. After counting the said amount, the accused kept the same in his shirt pocket, in the presence of PW1 and PW2. After receiving the said sum of Rs.100/- (M.O.1 series) from P.W.1, the accused enquired about P.W.2. P.W.1 replied that P.W.2 was his Uncle. The accused asked P.Ws.1 and 2 to wait outside and he would write the "Small Farmer Certificate". On a signal given by PW1 by lighting a cigarette, the trap squad led by P.W.9 went to the office of the Revenue Inspector along with P.Ws.1 and 2, where P.W.1 identified the accused. Immediately, P.W.9 enquired the accused about the demand of bribe and proceeded to trap him. The accused got tensed. Then, P.W.9 took two glasses of water and added Sodium Carbonate powder and asked the accused to immerse both the hands and observed that the solution turned purple-red; poured the solution in two bottles; and marked the solution in which the accused immersed his right hand as "S2" (M.O.6) and left hand as "S3" (M.O.7) and kept the same under seal. The accused became more tensed. During the enquiry the accused admitted that he accepted the amount of Rs.100/- from P.W.1 and kept the same in his left side shirt pocket, and took out the said amount of Rs.100/- (M.O.1 series) and gave the same to P.W.9. The numbers of the said currencies tallied with the numbers mentioned in the mahazar (Ex.P.10). The amount of Rs.100/- was seized as M.O.1 series under Mahazar Ex.P13. The shirt which the accused was wearing was removed and the left side pocket of the shirt was immersed in the solution and as a result, the solution turned purple-red and the same was poured in a bottle and marked as "S4" (M.O.8), the shirt which the accused was wearing was marked as M.O.5. P.W.9, therefore, arrested the accused.

6.1 Pursuant to the said trap conducted on 5.3.1990, the Investigating Officer (P.W.9) collected further evidence from P.Ws.3, 4, 5, 6 and 7, who were working as Tahsildar in the Revenue Department, Head Clerk in the District Court, Krishnagiri, Village Administrative Officer of Harur Taluk, Assistant Engineer in Tamil Nadu Electricity Board at Harur and Deputy Tasildar respectively, and got a sanction from the District Revenue Officer

(P.W.8), the sanctioning authority under Section 19 of the Act, for prosecuting the accused, and laid charge sheet against the accused as follows:

"1. That the accused being a public servant while employed as Revenue Inspector, Harur Firka, on 28.02.1990 at the Taluk Office, Harur, demanded Rs.100/- from one Kannan as gratification other than legal remuneration as a motive for issuing "Small Farmer Certificate" so as to enable the said Kannan to get free supply of electricity, and in pursuance of the demand by the accused on 5.3.1990 at about 4.45 p.m. at his office at Harur the accused demanded and accepted Rs.100/- from the said Kannan as gratification other than legal remuneration and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988; and

2. additionally, that the accused on 5.3.1990 at about 4.45 p.m. at his office at Harur, the accused being a public servant, abusing his official position by corrupt or illegal means or otherwise, obtained pecuniary advantage to the extent of Rs.100/- from the said Kannan and thereby committed an offence punishable under Section 13(1)(d)(i) & (ii) read with Section 13(2) of the Prevention of Corruption Act."

6.2. Since the accused denied the charges, he was tried for the said charges in C.C.No.75 of 1991 by the learned I Additional District Judge-cum-Chief Judicial Magistrate, Krishnagiri.

7.1. To bring home the guilt against the accused, the prosecution examined 9 witnesses, of whom P.W.1 is the aggrieved party who lodged the complaint before the Inspector of Police, Vigilance and Anti Corruption Department, Dharmapuri; P.W.2 is the trap witness; P.Ws.3 and 7 are the witnesses from the Revenue Department, who spoke about the procedure for issuing "Small Farmer Certificate"; P.W.4 is the Court witness, who sent the material objects for analysis to the Forensic Laboratory; P.W.5 is the Village Administrative Officer of Harur Village, who deposed that he had given Ex.P6 Chitta, Ex.P7 Adangal and Ex. P8 "No Objection Certificate" to P.W.1 to enable him to get the " Small Farmer Certificate"; and P.W.8 is the sanctioning authority under Section 19 of the Act, who gave sanction for prosecuting the accused.

7.2. That apart, 21 documents were marked as Exs.P1 to P21, on behalf of the prosecution, which are relevant to be referred to:

Exs.P1
to Ex.P4
Four application forms given by P.W.1 for obtaining "Small Farmer Certificate"

Ex.P5
Requisition letter given by P.W.1 addressed to the Tahsildar, Harur, for obtaining "Small Farmer Certificate"

Ex.P6

Copy of the Chitta issued by P.W.5

Ex.P7
Copy of Adangal issued by P.W.5

Ex.P8

"No Objection Certificate" issued by P.W.5.

Ex.P9
Complaint given by P.W.1 to P.W.9.

Ex.P10
Mahazar prepared in the Office of P.W.9 for recovery of M.Os.1 to 4

Ex.P11
File relating to application of PW1 seized from PW4

Ex.P12
Rough Sketch prepared by P.W.9

Ex.P13
Mahazar prepared in the Taluk Office for recovery of the amount of Rs.100/-

Ex.P14
Government Order Ms.No.1711

Ex.P15
Register pertaining to Small Farmers

Ex.P16
Requisition for chemical examination of M.O.2 to M.O.8

Ex.P17
Letter of the Court for sending M.O.2 to M.O.4 for chemical analysis

Ex.P18
Chemical analysis report

Ex.P19
Authorisation of P.W.5 certifying that P.W.1 is a small farmer.

Ex.P20
Sanction order by P.W.9 to initiate proceedings against the accused.

Ex.P21
FIR prepared by P.W.9

8. While the accused was questioned under Section 313 Cr.P.C., in the

light of the evidence of P.Ws.1 to 9 and the documentary evidence, viz., Exs.P1 to P21, the accused pleaded innocence and false implication, contending that he never demanded or accepted any bribe from P.W.1.

9. The learned I Additional District Judge-cum-Chief Judicial Magistrate, Krishnagiri, by judgment dated 15.7.1996 in C.C.No.75 of 1991, rejected the defence of the accused, and convicted him for the offence punishable under Sections 7 and 13(2) read with 13(1)(d)(i)(ii) of the Act and sentenced him with rigorous imprisonment for six months with a fine of Rs.500/-, in default to undergo simple imprisonment for one month for the offence punishable under Section 7 of the Act, and with rigorous imprisonment for one year with a fine of Rs.500/-, in default to undergo simple imprisonment for one month for the offence punishable under Section 13(1)(d)(i) & (ii) r/w Section 13(2) of the Prevention of Corruption Act. Hence, the above appeal.

10.1. Mr. B.Sriramulu, learned Senior Counsel appearing for the accused inviting my attention in detail to the evidence on record, contends that:

(i)the accused never demanded and accepted bribe of Rs.100/- (M.O.1 series) from P.W.1 as alleged by the prosecution;
(ii)P.W.1 was in the habit of making complaints against the public servants if he was unable to get the work done and hence the testimony of P.W.1 could not be relied upon; and
(iii)in the absence of any independent witnesses it may not be safe to convict the accused for the offence under Sections 7 and 13(1)(d)(i) & (ii) r/w 13(2) of the Act, merely based on the evidence of P.W.1 and the trap witness (P.W.2) and hence, the conviction and sentence are liable to be set aside.

10.2. In any event, the conviction of the accused for the offences under Section 7 as well as Sections 13(1)(d)(i) & (ii) r/w 13(2) of the Act on the same set of facts is impermissible in law as held by this Court, by judgment dated 28.3.2002 in Crl.A.No.667 of 1995.

11.1. Per contra, Mr.V.Jayaprakash Narayanan, learned Government Advocate, answering to the submissions made by Mr.B.Sriramulu, learned Senior Counsel for the accused submits that:

(i)the prosecution has proved the case of demand and acceptance of bribe by the accused through the evidence of P.Ws.1 and 2 and exhibits and material objects marked on the side of the prosecution;
(ii)it is not necessary that the evidence of complainant and trap witness should corroborate with independent witness; and
(iii)in the absence of motive suggested against P.Ws.1 and 2 there is no reason to disbelieve the testimony of P.Ws.1 and 2.

11.2. Mr.V.Jayaprakash Narayanan, learned Government Advocate also contends that there is no bar to try the accused for two offences on the same set of facts if the ingredients of each of the offence are satisfied.

12. I have considered the arguments addressed on behalf of the parties and perused the records.

13. Two substantial points that arise for my consideration in these appeals are:

(i)Whether the accused could be convicted for the offences punishable under Section 7 of the Act and 13(1)(d)(i) and (ii) r/w 13(2) of the Act on the same set of facts?
(ii)Whether the judgment of trial Court convicting and sentencing the accused for the offences punishable under Section 7 of the Act and 1 3(1)(d)(i) and (ii) r/w 13(2) of the Act is justified in law?

14.1. Point (1) - Whether the accused could be convicted for the offences punishable under Section 7 of the Act and 13(1)(d)(i) and (ii) r/w 13(2) of the Act on the same set of facts?

14.2. Reliance was placed on the decision of this Court dated 28.2.2002 in Criminal Appeal No.667 of 1995, contending that the accused could not be convicted for the offences punishable under Sections 7 of the Act and 13(1)(d)(i) and (ii) r/w 13(2) of the Act for the same set of facts narrated above.

14.3. It is true, as pointed out by Mr.B.Sriramulu, learned senior counsel for the accused, that MALAI SUBRAMANIAM,J. in Criminal Appeal No.667 of 1995, by judgment dated 28.2.2002 held as follows:

"...7. The appellant was convicted for a single act of taking bribe both under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Section 7 of the Act punishes any public servant who takes gratification other than legal remuneration as a motive or reward for doing any official act in exercise of his official functions. Here is case where the appellant in exercise of his official function, viz., measuring the land as a surveyor had demanded and also accepted bribe. Therefore, the facts of the case clearly fit in within Section 7 of the Prevention of Corruption Act, 1988. Insofar as Section 13(1)(d) is concerned, it speaks about the misconduct committed by public servants. There cannot be any dispute that accepting a bribe is a misconduct. But when once there is a direct penal provision covering the guilt of the accused, he cannot be punished both under Section 7 as well as under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Section 13(1)(d) is applicable in case where prosecution is unable to trap the accused and prove the actual demand and receipt of illegal gratification. Only in a case, where evidence is let in to the effect that by abusing his power, the public servant obtained either for himself or for somebody any valuable thing or pecuniary advantage then Section 13(1)(d) is attracted. Where there is specific provision for punishing a public servant for illegal gratification, another provision punishing misconduct need not be invoked to punish the offender under two provision of law for a single act of receiving a bribe. Therefore, I am of the view that the facts of the case clearly attract the provisions under Section 7 of the Prevention of Corruption

Act, 1988 and therefore, he could not have been punished under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

8. In the result, the conviction and sentence of the appellant for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act is set aside and his conviction for the offence under Section 7 of the Prevention of Corruption Act is confirmed..."

14.4. I am unable to agree with the above view for the following reasons:

(i)Either the demand or acceptance of gratification other than the legal remuneration as a motive or reward in the exercise of an official duty by a public servant amounts to an offence and criminal misconduct punishable under the provisions of the Act.

(ii)When Section 7 of the Act bars the demand and Section 13 of the Act prohibits obtaining of pecuniary advantage, I do not see any ambiguity to hold that both are distinct offences. In which case, though the same set of facts constitute distinct offences, there cannot be a bar to try or convict and punish the offender for both offences.

(iii)A reference to Section 26 of the General Clauses Act may be relevant in this context. Section 26 of the General Clauses Act reads as follows:
"Section 26: Provisions as to offences punishable under two or more enactments:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

A plain reading of Section 26 of the General Clauses Act shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, when demand of bribe and prohibition to accept the bribe are considered as two distinct offences under the Act, the offender may be prosecuted and punished for both the offences even on the same set of facts and the same is not barred in law, because what was barred under Section 26 of the General Clauses Act is punishing the accused twice for the same offence. Since the demand and acceptance of bribe constitute two different offences, the prosecution of the accused for the said offences for independent charges and convicting and punishing him for both the offences independently cannot be questioned as double jeopardy.

(iv) In an identical case, by judgment dated 5.3.2003 in Crl.A.Nos.49 0 of 1996 and 248 of 1997, I have observed as follows:
"... 17.1. The practice of giving and demanding bribe is a social evil having deleterious effect on the entire civilized society and has to be condemned by the strong hands of judiciary. Misuse of power while discharging their public duty by demanding or/and accepting bribe by the public servant,

therefore, implies doing of something illegal and improper. The essence of such illegality and impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of public duties is for mutual personal gain, the misuse is usually termed as corruption.

17.2. Corruption, Corruption, Corruption in everything and everywhere is the hue and cry of the general public at the length and breadth of this greatest democratic nation. Corruption has penetrated into the grassroots of the society and has grown as a baniyan tree in all branches of the public administration. Bribery and corruption having been uncontrolled and rampant, and the need for weeding them out having been felt, the Prevention of Corruption Act, 1988 was enacted. "

(v) Hence, I am of the considered opinion that the accused could be tried for both the offences, viz., for the demand of bribe punishable under Section 7 of the Act, and for the acceptance of bribe punishable under Section 13(1)(d)(i) and (ii) of the Act, on the same set of facts which is not barred under the statute, as the Court is obliged to give effect to the intention of the legislature in its spirit and substance but not to ignore the same defeating the very object or intention of the legislature, viz., the demand as well as acceptance of the bribe is punishable under the provisions of the Act.

14.5. Point (1) is answered accordingly.

15.1. Point (2) - Whether the judgment of trial Court convicting and sentencing the accused for the offences punishable under Section 7 of the Act and 13(1)(d)(i) and (ii) r/w 13(2) of the Act is justified in law?

15.2. In the judgment dated 5.3.2003 in Crl.A.Nos.490 of 1996 and 24 8 of 1997, I have held that:

"... 17.3. Even though the onus to prove the guilt of the accused beyond any shadow of doubt is on the prosecution, as per Section 20 of the Act, the burden of proof is shifted on the accused when it is shown that the accused has accepted or obtained or agreed to accept or obtain gratification other than legal remuneration as a motive or reward. It is a trite law that once the prosecution proves acceptance of money by the accused, the presumption to be drawn is that the tainted money is the bribe money, and then it will be for the accused to explain or controvert the essential elements in the prosecution case, even though it is not for the accused at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence."

15.3. Keeping in mind the legislative intention and well settled principles as to the burden of proof shifted on the accused, when it is shown that the accused had accepted bribe, as per Section 20 of Act, the conviction and sentence of the accused by judgment dated 15.7.19 96 in C.C.No.75 of 1991 passed by the learned First Additional District Judge-cum-Chief Judicial Magistrate at Krishnagiri has to be tested in the teeth of the evidence of P.W.1, the aggrieved party, the evidence of P.W.2, the trap witness, which corroborates with the evidence that of P.W.9, the Investigating Officer, other

departmental witnesses, and material objects, viz., Exs.P1, P2, P3, P4, P5, P9, P10, P13 , P16, P17, P18 and P21, referred to above.

15.4. Admittedly, the appellant/accused has no grievance as to the procedure adopted by the Investigating Officer (P.W.9) in conducting the trap, nor questioned the sanction obtained for prosecuting him, or alleged any motive against P.W.1 much less against P.W.2, the trap witness.

15.5. It is also well settled in law that the rule of corroboration is one of prudence and therefore need for corroboration of testimony of trap witnesses is not a universal rule, as held by the Apex Court in SOMPRAKASH vs. STATE OF DELHI reported i R 1974 SC 989.

16.1. In this regard, I am obliged to scrutinize the evidence relied upon by the prosecution.

16.2. P.W.1 categorically deposed that the accused demanded illegal gratification from him to discharge public duty with respect to the issuance of "Small Farmer Certificate" on 28.2.1990 at 10.a.m. and accepted a sum of Rs.100/- as bribe on 5.3.1990 at 4.30 p.m. in the presence of P.W.2.

16.3. P.W.2, who was a trap witness, deposed that he was working in Dharmapuri Municipal Office during 1990, that the Municipal Commissioner asked him to be a trap witness, that in his presence P.W.1 gave M.O.1 series to the accused, and that in his presence P.W.9 recovered M.O.1 series from the accused.

16.4. P.W.3, who was working as Tahsildar at Harur Taluk from August 1989 to September 1990, deposed that either the Deputy Tahsildar or Tahsildar can issue "Small Farmer Certificates" to the persons, who are having 5 acres of punja land or 2 + acres of nanja land, after due verification by the Revenue Inspectors and the Village Administrative Officers.

16.5. P.W.4, who was working as Head Clerk in the District Court, Krishnagiri, during the year 1990, deposed that on 19.3.1990, he received a requisition letter from P.W.9 for forwarding the material objects for chemical analysis.

16.6. P.W.5, who was working as a Village Administrative Officer of Harur Village, deposed that P.W.1 approached him on 13.2.1990 for obtaining "Small Farmer Certificate" for getting electricity supply at free of cost and he had given Exs.P1 to P4 application forms, Ex.P6 - chitta copy, Ex.P7 - adangal copy and Ex.P8 - "No Objection Certificate" certifying that P.W.1 was the resident of H.Thottampatti Village, was in possession of land to the extent of 0.50.0 hectare, and was entitled to claim the benefits of small farmers and supply of electricity at free of cost.

16.7. P.W.6, who was working as Assistant Engineer in Tamilnadu Electricity Board, deposed to the effect that on receipt of "Small Farmer Certificate" issued by the competent authority, namely, the Tahsildar, he would forward the same to the Division Office for sanction of supply of

electricity at free cost to the applicants.

16.8. P.W.8 was the District Revenue Officer, Dharmapuri, who deposed with respect to the sanction accorded for prosecuting the accused as contemplated under Section 19 of the Act.

16.9. P.W.9, the investigating officer who conducted the trap against the accused, graphically deposed about the procedure followed in trapping the accused in strict compliance of law, viz.,

(i)identifying independent trap witness, a Government servant (P.W.2);
(ii)explaining P.W.2 about the complaint made by P.W.1 against the accused as to the demand of illegal gratification;
(iii) explaining the procedure relating to the trapping as narrated in detail above;
(iv) the events taken place immediately after the receipt of illegal gratification by the accused and the procedure followed thereafter, as explained above;
(v)with respect to the evidence collected from P.Ws.3, 5 and 7, who are working in the Revenue Department, to prove that the accused demanded illegal gratification from P.W.1 at about 11.00 am on 28.2.1990 and at about 4.30 pm on 5.3.1990;
(vi)obtaining sanction as contemplated under Section 19 of the Act from P.W.8 for prosecuting the accused; and
(vii) with respect to the forwarding of material objects for chemical analysis and receipt of the analysis report (Ex.P18).

17.1. P.W.1 in his evidence graphically explained the demand of a sum of Rs.100/- by the accused for issuing "Small Farmer Certificate" to P.W.1 on 28.2.1990, which necessitated P.W.1 to approach the Vigilance and Anti-Corruption Department on 5.3.1990 and to lodge a complaint (Ex.P9), based on which F.I.R. (Ex.P21) was registered. As already observed, the Investigating Officer (P.W.9) following the procedure relating to the trap, strictly conducted the trap in the presence of P.W.2, the trap witness. Accordingly, the preparative test for trapping was duly carried on by P.W.9 as deposed by P.Ws.1 and 2 using Rupees Ten currency notes, ten in number, which were marked as M.O.1 series. The numbers of the said currency corroborates with the Mahazar (Ex.P10) prepared in the office of P.W.9 for recovery of M.O.1 series, and also corroborates with the Mahazar (Ex.P13) prepared in the taluk office with regard to the recovery of the amount of Rs.100/-. The evidence of P.W.1 corroborates with the testimony of P.W.2 as well as with that of the Investigating Officer (P.W.9). The evidence relating to the trap as narrated by P.Ws.1, 2 and 9, that the accused got tensed when he was caught red-handed and when the Sodium Carbonate solution turned purple-red after immersing the hands of the accused after acceptance of the bribe, is again substantiated with the chemical analysis report (Ex.P18), as per which, Sodium Carbonate and Phenolphthalein were detected in items S1 to S4 and also in the washings of the left side pocket of the shirt of the accused, viz., S7. Since the prosecution had discharged its initial burden that the accused has demanded and accepted the bribe from P.W.1, which also corroborates with the Chemical analysis report (Ex.P18), it is for the accused to explain or to

controvert the essential elements in the prosecution case, as per Section 20 of the Act.

17.2. In the instant case, since the acceptance of gratification was clearly established by the prosecution, as deposed by P.W.1, P.W.2the trap witness and P.W.9-the Investigating Officer, it should be presumed that the accused had accepted the said amount M.O.1 series as bribe for doing his public duty attracting Section 7 of the Act, unless the contrary is proved as held by the Apex Court in M.NARASINGA RAO Vs. STATE OF A.P. reported in 2001 SCC (Cri) 258.

17.3. The evidence of P.Ws.3, 4, 5, 6 and 7 further strengthens the case of the prosecution as the same reflects the legitimate claim of P.W.1 for getting "Small Farmer Certificate" for getting free electricity supply and the harshness to which he was subjected to by the accused, which necessitated him to approach the Vigilance and AntiCorruption Department for trapping the accused.

17.4. That apart, the testimony of P.W.1, in his cross-examination, in clear terms confirms the demand and acceptance of bribe by the accused from P.W.1, which, in turn, corroborates with the testimony of P.W.2 for having demanded and accepted the tainted money of Rs.100/- (M.O.1 series) at 4.30 p.m. on 5.3.1990. Immediately thereafter, P.W.9 rushed to the accused and caught him red-handed and completed the confirmative test of trapping, as narrated above in detail by P.Ws.1, 2 and 9.

17.5. The graphical evidence of P.Ws.1, 2 and 9 therefore shows that there was a clear demand and acceptance of bribe by the accused and hence, I have no hesitation to hold that the prosecution has established that the accused in discharging his official duty demanded and accepted bribe of Rs.100/- as illegal gratification.

17.6. Point (2) is answered accordingly.

18. Resultantly, I am of the firm opinion that the prosecution has established the guilt of the appellant under the charges beyond all reasonable doubts by adducing overwhelming and flawless oral and documentary evidence, and consequently, I dismiss this appeal, upholding the impunged judgment of the trial Court and affirming the conviction and sentence imposed therein.

Index : Yes
Internet : Yes

atr/sasi

To:

1. The First Additional District Judge
-cum-Chief Judicial Magistrate
at Krishnagiri.

2. State of Tamilnadu,
rep. by the Inspector of Police,
Vigilance and Anti Corruption
Department, Dharmapuri.

3. The Public Prosecutor
High Court, Madras.